

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 354

93RD GENERAL ASSEMBLY

Reported from the Committee on Transportation, March 15, 2005, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

TERRY L. SPIELER, Secretary.

1631S.02C

AN ACT

To amend chapter 226, RSMo, by adding thereto one new section relating to state enforcement of certain federal orders prohibiting the operation of commercial motor vehicles.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 226, RSMo, is amended by adding thereto one new section, to be known as section 226.009, to read as follows:

226.009. 1. Whenever the Federal Motor Carrier Safety Administration, the United States Department of Transportation, or the state highways and transportation commission issues an out-of-service order against a motor carrier, as those terms are defined in section 390.5 of Title 49, Code of Federal Regulations, as those regulations have been and periodically may be amended, the commission may immediately, without hearing, order the suspension, revocation, cancellation, confiscation, or any of these, of every license, registration, certificate, permit, and other credential issued to the motor carrier by the commission's authority under section 226.008 and every motor vehicle license plate issued under any provision of chapter 301, RSMo, which authorizes the operation of motor vehicles in intrastate or interstate commerce by that motor carrier. This section is applicable to out-of-service orders placing a motor carrier's entire operation out of service but does not apply to any out-of-service order placing an individual driver or individual vehicle out of service.

(1) The commission immediately shall serve notice of its order upon the affected motor carrier, and upon the director of revenue, in the manner authorized by section 622.410, RSMo, or any other manner

authorized by law for the service of notice of the commission's orders. The notice or order shall state a specific effective date for the commission's action or, in the commission's discretion, that its action shall become effective immediately upon the service of the notice or order upon the motor carrier. The order shall remain in force until ordered otherwise by the commission or by a court having proper jurisdiction.

(2) Whenever an order of the commission issued under subsection 1 of this section is in force, a motor carrier who is prohibited by the order from operating commercial motor vehicles shall not operate any commercial motor vehicles and shall not allow any employee, agent, lessor, or other person acting under the motor carrier's authority or control, to operate any commercial motor vehicles in intrastate or interstate commerce within this state. Upon receiving notice of the commission's order, the motor carrier immediately shall surrender all license plates, motor carrier licenses, registrations, permits, and other credentials as directed by the commission's order. While the out-of-service order is in force, the commission may dismiss or deny every application for the issuance of any of these credentials to that motor carrier.

(3) After the commission has issued an order under this section, the out-of-service motor carrier shall not be eligible to apply for the issuance or reinstatement of, and the commission shall not issue or reinstate, any license plate, motor carrier license, registration, permit, certificate, or other credential described in the commission's order until the out-of-service order and any commission orders issued under this subsection have been rescinded by the agency that issued these orders, or the orders have been set aside by a court having proper jurisdiction.

2. In any commission or court proceeding relating to this section, a copy of any federal or state order described in subsection 1 of this section shall be admissible and shall constitute prima facie evidence that the motor carrier violated Title 49, Code of Federal Regulations, or that the motor carrier's operation of commercial motor vehicles poses an imminent hazard to safety, or both, as stated in that order.

3. Any person who is aggrieved by an order of the highways and transportation commission issued under this section, or by any out-of-

service order issued by commission enforcement personnel under section 390.201, RSMo, or subsection 3 of section 307.400, RSMo, may apply to the circuit court for a hearing and review of the order. Venue of such judicial review shall lie within the county of Cole, or in the county where the out-of-service order was issued to the motor carrier. The right to a hearing and judicial review of the commission's orders under this section shall be waived, unless an aggrieved person files a petition for review with the clerk of the circuit court in the proper venue not later than thirty days following issuance of the order to be reviewed. Except as otherwise provided in this section, sections 622.430 to 622.450, RSMo, shall govern the judicial review of orders issued by the commission or its personnel as described in this section. In addition to any other interested parties, the commission shall have the right to appear in all hearing and review proceedings under this section and may, in its discretion, defend any order or notice issued and any action taken by any public agency or officer acting in good faith under the provisions of this section. This section shall not be construed as conferring any jurisdiction to review, amend, vacate, or set aside any orders issued by a federal agency or federal officer.

4. Notwithstanding any provision of law to the contrary, the highways and transportation commission may receive and disclose any data, information, or evidence relating to any out-of-service motor carrier as provided in this section. Except as otherwise provided in this section, this data may include, but is not limited to, the identity and location of any persons known or reasonably believed to have leased motor vehicles with or without driver to the out-of-service motor carrier, any persons known or reasonably believed to be operating commercial motor vehicles under the authority or control of the out-of-service motor carrier, and any motor vehicles owned, operated by, or leased to the out-of-service motor carrier or those persons, including the vehicle identification numbers. The commission, in its discretion, may disclose this data to the following entities, which are hereby authorized to receive such data from, and to disclose such data to, the commission:

- (1) The Federal Motor Carrier Safety Administration and other relevant officials of the United States Department of Transportation;
- (2) The department of revenue;

(3) The Missouri state highway patrol and any other peace officers authorized to exercise police powers within the state;

(4) Similarly authorized law enforcement agencies of any other state, of the United States government, or of any foreign government having legal authority to promote or enforce motor carrier safety; and

(5) Any liability insurer or surety that provides, or has an interest in providing, automobile liability insurance coverage for the out-of-service motor carrier or for any person who leases, or proposes to lease, motor vehicles to be operated by or under the authority or control of the out-of-service motor carrier.

5. Upon receiving notice of any order issued by the highways and transportation commission under subsection 1 of this section, together with any additional information reasonably required by the director of revenue, the director of revenue may immediately, without hearing, update the director's records to reflect the suspension, revocation, or cancellation of all motor vehicle license plates, registrations, and other credentials issued to the out-of-service motor carrier by the director of revenue or by the department of revenue. The director of revenue immediately shall notify the motor carrier, and the commission, of all actions taken pursuant to the commission's order. The motor carrier shall have the right to seek judicial review of the commission's order, including the suspension, revocation, or cancellation of motor vehicle license plates and registrations pursuant to the commission's order, as provided in subsection 3 of this section. The motor carrier shall not be entitled to any separate appeal or review of the director of revenue's notice of suspension, revocation, or cancellation of motor vehicle licenses or registrations, or any other actions taken by the director of revenue pursuant to the commission's order.

6. The commission may authorize any of its personnel to enforce any provision of this section, or any out-of-service orders described in this section, in the same manner provided by law for other orders of the commission authorized under section 226.008. The Missouri state highway patrol and other peace officers within this state may enforce the requirements of this section and of any orders issued under this section. If so authorized by the commission's order under this section, in addition to any other remedies provided by law, personnel of the state

department of transportation and the state highway patrol may confiscate any license plates, motor carrier licenses, registrations, certificates, permits, and other credentials issued to the motor carrier by the commission, the director of revenue, the department of revenue, or all of these.

7. Notwithstanding any provision of the law to the contrary, the state of Missouri, the highways and transportation commission, the department of revenue, the state highway patrol, and any peace officers or other public officers acting in good faith under the authority of this section shall not be held liable or required to pay any refund of any fees, taxes, assessments, penalties, fines, forfeitures, or other payments that may be charged to, received, or collected from the out-of-service motor carrier, or from persons whose motor vehicles are leased to or operated under the control of that motor carrier, in relation to any license plate, motor carrier license, registration, permit, certificate, or other credential that is suspended, revoked, canceled, or confiscated under any provisions of this section.

8. Any act or omission by a state agency that this section authorizes or requires with reference to an out-of-service motor carrier, or with reference to motor vehicles operated by an out-of-service motor carrier, is likewise authorized or required with reference to:

(1) Any person who operates motor vehicles under the actual control of that motor carrier, and any person who operates motor vehicles that are leased to that motor carrier, with or without driver; and

(2) Any motor vehicles operated under the actual control of that motor carrier, and any motor vehicles that are leased to that motor carrier, with or without driver.